


**OFCCP & AFFIRMATIVE ACTION  
UPDATE**

David Scheffler, Vice President of Compliance  
Pinnacle HR Consulting Services  
Alaska SHRM  
May 12, 2014



---

---

---

---

---


---

---

---

**LEGAL DISCLAIMER**

The materials presented today in both written and oral forms are for informational purposes only. Attendees should consult with their own legal counsel before taking any actions and should not consider these materials or discussions to be legal or otherwise advice. Professional advice should be obtained before attempting to address any legal situation or problem.



---

---

---

---

---


---

---

---

**AGENDA**

- OFCCP Trends
- Review of recent regulations
- New OFCCP regulations
  - VEVRAA
  - Section 503
- Recent Executive Orders



---

---

---

---

---

---



---

---

### OFCCP'S TOP 3 PRIORITIES

- Strengthen enforcement
- Implement regulatory agenda
- Broaden outreach to the individual worker

**“Good Jobs For Everyone”**



---

---

---

---

---



---

---

---

### OFCCP Focus

- Protecting workers
  - OFCCP is a “worker protection agency”
  - Expanded focus on all laws OFCCP enforces
- Promoting diversity
  - Renewed focus on good faith efforts & outreach
  - Expects more than the minimum
    - Building relationships with agencies
  - Expanding beyond women & minorities



---

---

---

---

---



---

---

---

### OFCCP Focus

- Enforcing the law
  - Will involve National and Regional Solicitors earlier in audits
  - More aggressive and expanded audits
  - Compensation discrimination is on the radar– especially for women
  - Fewer companies selected for audits, but going deeper
  - The number of hours that contractors spend on audits is skyrocketing
  - Looking for pattern and practice



---

---

---

---

---

---

---

---

### OFCCP FOCUS: REVERSE DISCRIMINATION

- “Reverse discrimination” is renewed focus
  - Title VII protects all, not only women & minorities
  - Analysis looks at “most favored group” approach
    - Especially in adverse impact
    - Men vs. women
    - Non-minorities vs. minorities
    - Black vs. non-black
    - Black vs. Hispanics



.....38 different combinations!




---

---

---

---

---

---

---

---

---

---

### AGGRESSIVE REGULATION CHANGES




---

---

---

---

---

---

---

---

---

---

### Non-Compliance Impacts Bottom Line

Manheim Entities	<b>Disbarred</b>
FedEx	<b>\$3,000,000</b>
Bank of America	<b>\$2,200,000</b>
M.C. Dean	<b>\$895,000</b>
Alcoa Mill	<b>\$540,000</b>
G&K Services	<b>\$290,000</b>
Medtronic	<b>\$290,000</b>
AstraZeneca	<b>\$250,000</b>




---

---

---

---

---

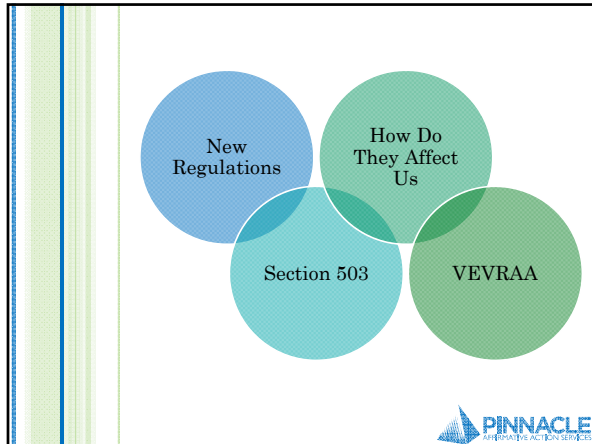
---

---

---

---

---



---

---

---

---

---

---

---

---

- ### NEW OFCCP REGULATIONS
- New regulations cover two major areas
    - Persons with a Disability
    - Protected Veterans
  - Regulations for Affirmative Action for Persons with a Disability
    - Section 503
  - Regulations for Affirmative Action for Veterans
    - VEVRAA
    - Vietnam Era Veterans Readjustment Assistance Act (VEVRAA)
    - 4212
- The Pinnacle logo is in the bottom left corner.

---

---

---

---

---

---

---

---

- ### WHO IS COVERED
- Section 503 (Disability)
    - Contractors with a federal contract or subcontract of \$10,000 or more
    - Applies to supply and service and construction contractors
  - VEVRAA (Veterans)
    - Contractors with a federal contract or subcontract of \$100,000 or more
    - Applies to supply and service and construction contractors
- The Pinnacle logo is in the bottom left corner.

---

---

---

---

---



---

---

---

### WHEN EFFECTIVE

- o New regulations go into effect in two parts
- o Subpart A, B, D, & E in effect as of March 24, 2014
- o Those sections cover:
  - EO clause revised
  - EEO is the Law – applicants and employees
  - Job posting requirements
  - EEO tagline updated



---

---

---

---

---



---

---

---

### EFFECTIVE DATES

- o Compliance with Subpart C is not mandated until the first new AAP cycle after March 24, 2014
  - If your plan date is January 1<sup>st</sup> = 1/1/15
- o Subpart C covers:
  - AA Plan documentation
  - New self-identification of disability and veterans requirements
  - Hiring benchmark for veterans
  - Utilization goal for persons with a disability
  - Data collection and analysis



---

---

---

---

---



---

---

---

### TRANSITIONAL YEAR

- o First year you are subject to Subpart C will be considered a transitional AAP



---

---

---

---

---

---

---

---

### CHANGING REGULATIONS AFFECT MANY DEPARTMENTS

- o The new regulations impact several departments within an organization
  - Human resources
  - Recruitment
  - Compliance/AA
  - IT
  - Procurement
  - Legal



---

---

---

---

---

---

---

---

### REVIEW OF MAJOR CHANGES



---

---

---

---

---

---

---

---

### AREAS OF MAJOR CHANGE

- o Definitions
- o EO clauses & statements
- o Invitations to self-identify
- o Benchmarks & goals
- o Data collection & analysis
- o Outreach & assessment
- o AAPs
- o Recordkeeping



---

---

---

---

---

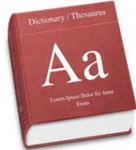
---

---

---

### DEFINITIONS

- o Section 503 persons with a disability definition harmonizes with ADA Amendments Act
  - Broader definition than most realize
- o VEVRAA replaces the term “other protected veteran” with “active duty wartime or campaign badge veteran”



---

---

---

---

---

---

---

---

### EO CLAUSE & STATEMENTS

- o Both Section 503 and VEVRAA regulations have EO clause language that must be added to subcontracts and purchase orders
- o All job advertisements and postings must contain an EOE statement stating they will not discriminate against persons with a disability or protected veterans
  - No longer use D and/or V
  - Disability and Vet are the minimum



---

---

---

---

---

---

---

---

### EO CLAUSE & STATEMENTS

- o EEO Is The Law Poster
  - Include electronic posting with online application system
  - Notice must be stored with, or as part of, the electronic application
- o EO policy statement
  - Update and disseminate
    - o Employees, vendors, labor unions
  - Needs to be accessible to employees and applicants
  - Must include reference to the top U.S. Executive's support



---

---

---

---

---

---

---

---

### INVITATIONS TO SELF-IDENTIFY

- o Pre and post-offer self-identification for disability and veterans status is now required
- o Solicit pre-offer identification at the same time in the application process as race, gender and ethnicity
- o Data must be kept confidential and separate from personnel and medical files




---

---

---

---

---

---

---

---

### SELF-IDENTIFICATION FORMS

- o OFCCP's form to self-identify as to disability status **must** be used by contractors
  - Both pre and post offer
  - Available on OFCCP website
- o Contractors can develop their own form for self-identification of veterans status or use form developed by OFCCP




---

---

---

---

---

---

---

---

### INVITATIONS TO SELF-IDENTIFY PERSON WITH A DISABILITY

- o Contractors must invite current employees to voluntarily self-identify as a person with a disability within the first year after new regulations become effective
- o Must resurvey workforce at least every five years
- o One interim reminder to employees that they may voluntarily update their disability status at any time
- o Document how the invitation was distributed
  - As all will not fill out form




---

---

---

---

---

---

---

---



### UTILIZATION GOAL PERSON WITH A DISABILITY

- o A 7% utilization goal for person with a disability has been established by the OFCCP
  - OFCCP could update the 7% number in the future
- o Used to assess the representation of persons with a disability within your existing workforce
- o Applies at job group level




---

---

---

---

---

---

---

---

### UTILIZATION GOAL PERSON WITH A DISABILITY

- o Required to annually evaluate goal per job group for each AAP
  - If fewer than 100 employees may conduct single analysis for workforce
- o If utilization is less than the 7% goal:
  - Assess if there are any barriers
  - Action-oriented plan to correct any identified problem areas




---

---

---

---

---

---

---

---

### HIRING BENCHMARK VETERANS

- o OFCCP will publish annually a hiring benchmark based on the national percentage of veterans in the workforce
- o Currently OFCCP benchmark is 7.2 %
  - Across entire workforce per establishment
- o Contractors may establish their own hiring benchmark using five factors determined by the OFCCP
  - Assume benchmarks lower than 7.2% will be highly scrutinized




---

---

---

---

---

---

---

---

### HIRING BENCHMARK VETERANS

- o No analysis required against the veterans hiring benchmark
- o Record the benchmark
- o Maintain records for three (3) years



---

---

---

---

---

---

---

---

### DATA COLLECTION

- o Data collection:
  - Total # of applicants
  - Total # of hires
  - Total # of persons with a disability/veterans applicants
  - Total # of persons with a disability/veterans hired
  - Total # of openings
  - Total # of jobs filled



---

---

---

---

---

---

---

---

### OUTREACH & ASSESSMENT

- o Establish outreach in the areas of veterans and persons with a disability
  - Make sure you are putting significant good faith efforts here
  - Outreach around veterans and persons with a disability will be aggressively enforced
- o Document all outreach activities



---

---

---

---

---


---

---

---

**OUTREACH & ASSESSMENT**

- Contractors must annually review outreach for the current and previous two years to assess outreach efforts.
- Was outreach effective?
- If the answer is no then:
  - Develop a plan to increase or identify alternative efforts
  - Implement action-oriented changes
- Required to document review and criteria utilized
  - Becomes part of AAP



---

---

---

---

---



---

---

---

**OUTREACH & ASSESSMENT**

- State workforce agency postings
  - Must provide information to the agency in a format that is permitted by the agency's employment service delivery system (ESDS)
  - Must state that the employer is Affirmative Action employer and request priority referrals
  - Contact information for the individual responsible for hiring at each location
  - If contact information changes; notify with next posting



---

---

---

---

---



---

---

---

**REASONABLE ACCOMMODATIONS**

- Section 503 encourages contractors to develop a written procedure for reasonable accommodations
- Recommendation is to process an applicant/employee request within 5-10 business days



---

---

---

---

---

---

---

---

### AFFIRMATIVE ACTION PLANS

- o The new AA plan requirements are almost identical for both veterans and persons with a disability
  - Data collection analysis
  - EO policy statement
  - Identify schedule for periodic review of physical and mental job qualifications and personnel processes
  - Internal and external dissemination of policy
  - Document goals/benchmarks for veterans and persons with a disability
  - Evaluate goal/benchmark attainment



---

---

---

---

---

---

---

---

### TRAINING

- o All personnel involved in recruitment, hiring, promotion or disciplinary processes shall be trained
  - Develop differing levels of training dependent on role within organization
    - o Hiring manager vs. recruiter
  - Document training



---

---

---

---

---

---

---

---

### RECORDKEEPING

- o Two different levels of record keeping
  - 3 years
    - o Annual assessment of outreach and recruitment
    - o Data collection by AAP establishment
    - o Review of mental and physical qualifications
    - o Hiring benchmark for veterans
    - o Training
  - 2 years (1 year if less than 150 employees, and less than \$150,000 in contracts)
    - o Utilization Analysis
    - o Direct threat defense explanation records for veterans



---

---

---

---

---



---

---

---

### WHAT TO DO TODAY

- Create an action plan and timeline
- Get budgets in place
  - There will be cost associated here
    - Manpower - ongoing
    - Outside vendors- one time costs
    - Technology changes – one time costs ATS/HRIS
- Identify resources needed
  - Can you accomplish internally
  - Vet outside vendors to put auditing assessment practices in place



---

---

---

---

---

---

---

---



---

---

---

---

---



---

---

---

### MARCH 24<sup>TH</sup> CHECKLIST

- EO clause language added/updated to contracts and purchase orders
- Update/review employee and applicant notices
- EO is the Law – poster notice added to online application
- Update job postings with new EO tagline
  - Disability and vets as minimum
- Job posting requirements with state and local workforce agencies updated
  - Provide required information in accepted format
  - Request priority referrals



---

---

---

---

---

---

---

---

### SUBPART C

- OFCCP FAQs encourage contractors to begin complying with all parts of the new regulations as soon as possible after March 24<sup>th</sup>
  - We would recommend the outreach efforts start as soon as practicable
- Contractors are not required to comply with Subpart C until the next AAP cycle after the effective date.
  - If you have a January 1, 2014 AAP; then compliance with Subpart C starts January 1, 2015



---

---

---

---

---

---

---

---

### WHAT IS NEXT FOR OFCCP



---

---

---

---

---

---

---

---

### RECENT EXECUTIVE ORDERS

- More regulation changes could be in our future
- Continue to show a commitment to OFCCP "hot areas"
  - Compensation
  - Persons with a disability
  - Veterans
- Wait and see mode



---

---

---

---

---

---

---

---

### MINIMUM WAGE

- On February 12, 2014, President Obama signed an Executive Order increasing the minimum wage for employees of federal contractors to \$10.10
- When are the new minimum wage requirements effective?
  - Applies to new or modified contracts executed after January 1, 2015
- Order requires the Secretary of Labor to issue new regulations implementing the Executive Order by October 14, 2014.



---

---

---

---

---

---

---

---

### COMPENSATION

- April 8, 2014 President Obama signs Executive Order
  - Prohibits federal contractors from retaliating against employees who discuss pay with other employees
  - Aimed at contractors taking proactive efforts to ensure fair pay
- Same day issues Presidential Memorandum
  - Instructing Secretary of Labor to establish new regulations on compensation
  - Requiring federal contractors to submit summary compensation data by sex and race



---

---

---

---

---

---

---

---

### WHAT TO DO ABOUT EXECUTIVE ORDERS

- What should contractors do now?



---

---

---

---

---

---

---

---

### EXECUTIVE ORDERS

- Wait for the proposed regulations for the needed details on how the new regulations will apply and be enforced
- Expect proposed regulations on the new minimum wage requirements by October 14<sup>th</sup>
- Administration continues to demonstrate equal pay is a priority
  - Federal contractors should focus on compensation



---

---

---

---

---

---

---

---



---

---

---

---

---

---

---

---

**DAVID SCHEFFLER**  
VICE PRESIDENT OF COMPLIANCE  
PINNACLE HR CONSULTING SERVICES

[DAVID.SCHEFFLER@PINNACLE-AAP.COM](mailto:DAVID.SCHEFFLER@PINNACLE-AAP.COM)  
770.693.7288



---

---

---

---

---

---

---

---





---

---

---

---

---

---

---

---